

HOUSE BILL NO. 787

INTRODUCED BY A. OLSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN TAX APPEAL AND DISPUTE RESOLUTION
5 PROCEDURES; REQUIRING THE STATE TAX APPEAL BOARD TO PROVIDE NOTICE TO ALL INTERESTED
6 PARTIES WITHIN 15 DAYS OF APPEAL OF A COUNTY TAX APPEAL BOARD DECISION; REVISING THE
7 PROVISIONS RELATED TO A DIRECT APPEAL FROM A DEPARTMENT OF REVENUE DECISION TO THE
8 STATE TAX APPEAL BOARD; ALLOWING TAXPAYERS WHO OWN INDUSTRIAL PROPERTY A DIRECT
9 APPEAL TO THE STATE TAX APPEAL BOARD; REQUIRING THE STATE TAX APPEAL BOARD TO HOLD
10 A HEARING ON CERTAIN PROPERTY TAX APPEALS WITHIN 1 YEAR AFTER RECEIVING A DIRECT
11 APPEAL; ALLOWING THE TAXPAYER OR THE DEPARTMENT OF REVENUE TO REQUEST AN EXTENSION
12 OF TIME FOR THE HEARING; PROVIDING FOR MEDIATION OF A TAX DISPUTE; REQUIRING THE STATE
13 TAX APPEAL BOARD TO RENDER A DECISION WITH 120 DAYS OF ANY TAX APPEAL HEARING;
14 PROVIDING FOR AN ADDITIONAL PENALTY OR REFUNDS UNDER CERTAIN CONDITIONS UPON FINAL
15 RESOLUTION OF A PROPERTY TAX APPEAL; REQUIRING THE STATE TO PAY THE ADDITIONAL
16 REFUND; AMENDING SECTIONS 15-1-211, 15-1-402, 15-2-301, 15-2-302, AND 15-15-101, MCA; AND
17 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 **Section 1.** Section 15-1-211, MCA, is amended to read:

22 **"15-1-211. Uniform dispute review procedure -- notice -- appeal.** (1) The department shall provide
23 a uniform review procedure for all persons or other entities, except as provided in subsection (1)(a).

24 (a) The department's dispute review procedure must be adopted by administrative rule and applies to
25 all matters administered by the department and to all issues arising from the administration of the department,
26 except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between
27 the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30,
28 part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to
29 assessments of centrally assessed property taxed pursuant to chapter 23 and to property classified as industrial
30 property by the department.

1 (b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar
2 enterprises.

3 (ii) The term "person" as used in this section includes all individuals.

4 (2) (a) Persons or other entities having a dispute with the department have the right to have the dispute
5 resolved by appropriate means, including consideration of alternative dispute resolution procedures such as
6 mediation.

7 (b) The department shall establish a dispute resolution office to resolve disputes between the department
8 and persons or other entities.

9 (c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute
10 resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued
11 within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

12 (3) (a) The department shall provide written notice to a person or other entity advising ~~them~~ the person
13 or other entity of a dispute over matters administered by the department.

14 (b) The person or other entity ~~shall have~~ has the opportunity to resolve the dispute with the department
15 employee who is responsible for the notice, as indicated on the notice.

16 (c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to
17 the dispute resolution office.

18 (d) The notice must advise the person or other entity of ~~their~~ the opportunity to resolve the dispute with
19 the person responsible for the notice and ~~their~~ the right of the person or other entity to refer the dispute to the
20 dispute resolution office.

21 (4) Written notice must be sent to the persons or other entities involved in a dispute with the department
22 indicating that the matter has been referred to the dispute resolution office. The written notice must include:

23 (a) a summary of the department's position regarding the dispute;

24 (b) an explanation of the right to the resolution of the dispute with a clear description of all procedures
25 and options available;

26 (c) the right to obtain a final department decision within ~~180~~ 60 days of the date that the dispute was
27 referred to the dispute resolution office;

28 (d) the right to appeal should the department fail to meet the required deadline for issuing a final
29 department decision; ~~and~~

30 (e) the right to have either the person involved or the department consider alternative dispute resolution

1 methods, including mediation; and

2 (f) a statement that if both parties agree to mediation, the cost of mediation must be shared equally.

3 (5) The department shall:

4 (a) develop guidelines that must be followed by employees of the department in dispute resolution
5 matters;

6 (b) develop policies concerning the authority of an employee to resolve disputes; and

7 (c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute
8 resolution office.

9 (6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with
10 a person or other entity relating to a matter administered by the department.

11 (ii) The director or the director's designee has no authority to bind a future legislature through the terms
12 of an agreement.

13 (b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and
14 conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

15 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
16 employee, or agent of this state; and

17 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection,
18 payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be
19 annulled, modified, set aside, or disregarded.

20 (7) The department and the owner of centrally assessed property or industrial property shall enter into
21 mediation regarding any dispute with the department. Mediation of the dispute may not exceed 60 days. If the
22 dispute is not resolved within 60 days, the department shall issue its final decision."

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24 **Section 2.** Section 15-1-402, MCA, is amended to read:

25 **"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a
26 property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay
27 under written protest that portion of the property tax or fee protested.

28 (b) The protested payment must:

29 (i) be made to the officer designated and authorized to collect it;

30 (ii) specify the grounds of protest; and

1 (iii) not exceed the difference between the payment for the immediately preceding tax year and the
2 amount owing in the tax year protested unless a different amount results from the specified grounds of protest,
3 which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

4 (c) If the protested property tax or fee is on property that is subject to central assessment pursuant to
5 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested
6 payment for each county in which a protested payment was made. By November 1 of each year, the department
7 shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central
8 assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

9 (2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing
10 a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay
11 the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when
12 due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

13 (3) If a protested property tax or fee is payable in installments, a subsequent installment portion
14 considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced
15 to recover the subsequent installment. The determination of the action or suit commenced to recover the first
16 installment portion paid under protest determines the right of the party paying the subsequent installment to have
17 it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not
18 paid by the taxpayer plus interest from the date the subsequent installment was due.

19 (4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county
20 or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to
21 be designated as a protest fund and must be retained in the protest fund until the final determination of any action
22 or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other
23 local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money
24 of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision
25 creating the special protest fund does not apply to any payments made under protest directly to the state.

26 (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to
27 15-23-101 must be remitted by the county treasurer to the department.

28 (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant
29 to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the
30 funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue

1 fund.

2 (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited
3 in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special
4 revenue fund.

5 (5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by
6 the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved
7 may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion
8 of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the
9 protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does
10 not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the
11 first-year protest amount.

12 (b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property
13 that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains
14 unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all
15 or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction
16 to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding
17 in a subsequent year any or all of the payments to which it is entitled.

18 (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not
19 commenced within the time specified or if the action is commenced and finally determined in favor of the
20 department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the
21 protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed
22 property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax
23 belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses
24 charged to the local government units.

25 (b) (i) Subject to the provisions of subsections (8) and (9), if the action is finally determined adversely
26 to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying
27 the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time
28 set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the
29 amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to
30 recover, together with interest from the date of payment under protest.

1 (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund
2 provided for in 17-6-203 for the applicable period.

3 (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer
4 shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

5 (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the
6 protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which
7 local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the
8 treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction
9 is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state
10 treasurer as provided in subsection (6)(b).

11 (ii) For an adverse protest action against the state for centrally assessed property, the department shall
12 refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and
13 from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an
14 adverse protested action from the centrally assessed property tax state special revenue fund may not exceed
15 the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii)
16 and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred
17 to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested
18 action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments
19 to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder
20 of the refund proportionally from the state general fund and from money deposited in the state special revenue
21 fund levied pursuant to 15-10-107.

22 (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is
23 allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The
24 taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of
25 payment under protest until the date of final resolution of the protest and at the combined rate of the federal
26 reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution,
27 plus 4 percentage points, from the date of final resolution of the protest until refund is made.

28 (7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds
29 from one or more of the following sources:

30 (a) imposition of a property tax to be collected by a special tax protest refund levy;

1 (b) the general fund or any other funds legally available to the governing body; and

2 (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving
3 revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or
4 school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be
5 issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

6 (8) (a) (i) A taxpayer who requested an extension of time, as provided in 15-2-302, and who is not
7 entitled to recover the full amount of the taxes paid under protest or who is not entitled to any refund as
8 determined in a final resolution of the protest action may be assessed a penalty.

9 (ii) If the disputed assessed value of the property determined in the final decision is between 60% and
10 100% of the disputed assessed value of the property determined by the department, the penalty is 3% of the
11 amount of protested taxes not refunded to the taxpayer.

12 (iii) If the disputed assessed value of the property determined in the final decision is less than 40% of the
13 disputed assessed value of the property determined by the department, the penalty is 4% of the amount of
14 property taxes paid under protest.

15 (b) (i) Subject to subsections (8)(b)(ii) and (8)(b)(iii), the amount of the penalty determined in subsection
16 (8)(a) must be deducted from the amount of protested taxes refunded to the taxpayer.

17 (ii) If the penalty is greater than the refund, the county treasurer shall add the difference between the
18 penalty and refund to the next property tax installment that is due from the taxpayer under 15-16-102.

19 (iii) If the taxpayer is not entitled to a refund, the county treasurer shall add the amount of the penalty to
20 the next property tax installment that is due from the taxpayer under 15-16-102.

21 (c) The penalty, less an administrative fee commensurate with the costs actually incurred by the county
22 treasurer under this subsection (8), must be allocated in proportion to all mill levies assessed against the property.

23 (9) If the department requested an extension of time, as provided in 15-2-302, and the final decision is
24 adverse to the state and taxing jurisdictions, the taxpayer is entitled to an additional refund amount as provided
25 in this subsection. If the assessed value of the property, as determined by the department, is more than 40%
26 greater than the value determined in the final decision, the total amount of the refund, including the refund due
27 from taxing jurisdictions and from the state, to the taxpayer must be increased by 3%. The state treasurer shall
28 pay the additional refund amount on behalf of taxing jurisdictions and the state.

29 ~~(8)(10)~~ If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund
30 is not owed."

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Section 3. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board decisions. (1) (a) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department ~~of revenue~~. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint.

(b) Notice ~~The state tax appeal board shall give notice of acceptance or rejection of an appeal must be given to the county tax appeal board, appellant, and respondent within 15 calendar days from the date of receipt of the appeal by the state tax appeal board.~~ The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record. A determination of the appeal must be made within 120 calendar days after the hearing or completion of the transcript, whichever occurs later.

(3) On all hearings at county seats throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and

1 statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent
 2 that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act.
 3 The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax
 4 appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or
 5 otherwise unlawful.

6 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
 7 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
 8 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the
 9 extent that it does not conflict with 15-2-303.

10 (6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing
 11 an order to change the valuation of property."
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13 **Section 4.** Section 15-2-302, MCA, is amended to read:

14 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
 15 person may appeal to the state tax appeal board a final decision of the department ~~of revenue~~ involving:

16 (a) property centrally assessed under chapter 23;

17 (b) property that has been classified as industrial property by the department;

18 ~~(b)~~(c) classification of property as new industrial property;

19 ~~(c)~~(d) except as provided in subsection (1)(b), any other tax, other than the property tax, imposed under
 20 this title; or

21 ~~(d)~~(e) any other matter in which the appeal is provided by law.

22 (2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of
 23 the department's final decision. The complaint must set forth the grounds for relief and the nature of relief
 24 demanded. The board shall immediately transmit a copy of the complaint to the department and shall give notice
 25 of acceptance or rejection of the appeal to the appellant and the department within 15 calendar days from the
 26 date of receipt of the complaint.

27 (3) The department shall file with the board an answer within 30 days following filing of a complaint.

28 (4) The board shall conduct the appeal in accordance with the contested case provisions of the Montana
 29 Administrative Procedure Act. The board shall make its final decision within 120 days of the date of the hearing
 30 or completion of the transcript, whichever occurs later.

1 (5) (a) Except as provided in subsections (5)(b) and (5)(c), the board shall conduct the hearing on the
 2 appeal within 1 year from the time that the appeal is received by the board.

3 (b) The appellant or the department may request a 6-month extension of the hearing. The board may
 4 grant only one request for an extension by each party for each appeal. If the decision of the board is determined
 5 adversely to the party requesting the extension, that party may be subject to the provisions of 15-1-402(8) or (9).

6 (c) This subsection (5) applies only to appeals filed by owners of centrally assessed property and owners
 7 of property described in subsection (1)(b).

8 ~~(5)(6)~~ The decision of the ~~state tax appeal~~ board is final and binding upon all interested parties unless
 9 reversed or modified by judicial review. Proceedings for judicial review of a decision of the ~~state tax appeal~~ board
 10 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the
 11 extent that it does not conflict with 15-2-303."

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13 **Section 5.** Section 15-15-101, MCA, is amended to read:

14 **"15-15-101. County tax appeal board -- meetings and compensation.** (1) The board of county
 15 commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve
 16 staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county
 17 in which they serve. The members receive compensation of \$45 a day and travel expenses, as provided for in
 18 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from
 19 property tax assessments or when they are attending meetings called by the state tax appeal board. Travel
 20 expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and
 21 equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must
 22 be paid from the appropriation of the state tax appeal board.

23 (2) The county tax appeal board shall hold an organizational meeting each year on the date of its first
 24 scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled.
 25 It shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear
 26 protests concerning assessments made by the department until the business of hearing protests is disposed of
 27 and, as provided in 15-2-201, may meet after December 31.

28 (3) In connection with an appeal, the county tax appeal board may change any assessment or fix the
 29 assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder
 30 shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear

1 scheduled protests concerning assessments and the latest date the county tax appeal board may take
2 applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if
3 none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of
4 the current tax year.

5 (4) Challenges to a department rule governing the assessment of property or to an assessment
6 procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers
7 unless an action is brought in the district court as provided in 15-1-406.

8 (5) This chapter does not apply to centrally assessed property or to property that has been classified as
9 industrial property by the department."

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11 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2007.

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13 NEW SECTION. Section 7. Applicability. [This act] applies to tax appeals filed under 15-1-211 after
14 June 30, 2007.

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